

UNITED STATE DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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PAUL CIPRIANI,

*Plaintiff,*

- against -

**AFFIDAVIT IN  
OPPOSITION TO  
PLAINTIFF'S  
MOTION TO  
COMPEL**

HARRY C. BUFFARDI, Sheriff;  
SCHENECTADY COUNTY;  
MR. BURNS, MR. JONES, MR.  
ADAMS, MS. JONES, MS. HULL,  
JOHN DOE #1; JOHN DOE #7;  
JOHN DOE #10; LORAIN WALKER,

Case No.:  
9:06-cv-0889

*Defendants.*

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**JONATHAN M. BERNSTEIN**, being duly sworn deposes and states:

1. I am an attorney and counselor at law admitted to practice in the State of New York and in the United States District Court for the Northern District of New York, and am an associate of Goldberg Segalla, LLP, attorneys for the defendants Adams, Burns, Hull, Jones, Jones and Sheriff Harry C. Buffardi.

2. This Affidavit is submitted on behalf of defendants in opposition to plaintiff's second motion to compel. This opposition is made on the part of defendants Ms. Jones, Buffardi, Adams, Mr. Jones, and Hull because plaintiff's second motion is only directed at these defendants. Plaintiff's first motion to compel against defendant Burns was denied as moot pursuant to the Decision and Order of the District Court (*see*, Docket No. 77).

3. This motion must be denied as plaintiff has failed to comply with Local Rule 7.1, in that he has not made a good faith effort to resolve any outstanding



discovery issues before filing this motion. Not until receiving plaintiff's Second Motion to Compel was your deponent even aware that these demands existed. At no time prior to filing the motion did plaintiff send a letter to your deponent as the attorney for the defendants demanding responses to these demands. At this juncture, plaintiff is well aware that Goldberg Segalla, LLP, represents defendants Ms. Jones, Buffardi, Adams, Mr. Jones, Hull and Adams. Plaintiff should therefore direct all demands and correspondences to Goldberg Segalla, LLP, prior to filing discovery motions, which plaintiff failed to do. Moreover, plaintiff cannot simply rely on his first motion to compel as a basis for asserting that defendants were aware that additional discovery demands exist because it only dealt with a Demand for Interrogatories served on defendant Burns not the demands at issue. In fact, the demands at issue were not attached to the first motion to compel.

4. As plaintiff's Second Motion to Compel does not comply with Local Rule 7.1, it is respectfully requested that the motion be denied and that plaintiff be ordered to comply with the Local Rules.

5. In any event, the motion should be denied as moot. The alleged failure on the part of defendants to respond was not willful because the existence of these demands was not known. Upon learning of plaintiff's demands, your deponent worked with the defendants to generate responses.

6. Attached hereto as Exhibit **A** is the Interrogatory Responses for defendant Sherri Jones.

7. Attached hereto as Exhibit **B** is the Interrogatory Responses for defendant Andrew Jones.



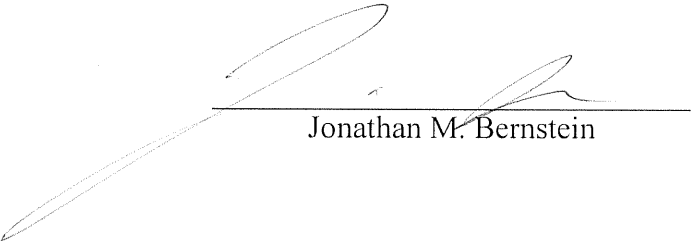
8. Attached hereto as Exhibit **C** is the Interrogatory Responses for defendant Tanya Hull.

9. Attached hereto as Exhibit **D** is the Interrogatory Responses for defendant William Adams, Jr.

10. Attached hereto as Exhibit **E** is the Response to Plaintiff's Discovery Demands.

11. Regarding plaintiff's Interrogatories upon Sheriff Buffardi, the District Court directed the U.S. Marshall to effect service of process on the Sheriff by February 15, 2008. Therefore, at this point plaintiff's demand on the Sheriff and the motion as it relates to the Sheriff is premature (*see*, Docket No. 77).

WHEREFORE, plaintiff's motion made pursuant to Rules 33, 34 and 37 of the Federal Rules of Civil Procedure should be denied in its entirety with prejudice.



Jonathan M. Bernstein

Sworn to before me this  
11<sup>th</sup> day of January, 2008.



Notary Public

44303

**CAROL A. LIBERTUCCI**  
Notary Public, State of New York  
No. 01LI5077728  
Qualified in Greene County  
Commission Expires 5/12/2011